

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

\* \* \*

PEYTON H. HEMINGWAY.

Plaintiff,

V.

GABRIEL L. GRASSO P.C.,

Defendant.

Case No. 2:16-cv-01253-GMN-PAL

## ORDER

(Mot. Reopen Case – ECF No. 6)

12 This matter is before the court on Plaintiff Peyton H. Hemingway's Motion to Reopen Case  
13 (ECF No. 6), filed October 3, 2016. This Motion is referred to the undersigned pursuant to 28  
14 U.S.C. § 636(b)(1)(A) and LR IB 1-3 and 1-7 of the Local Rules of Practice.

15 Plaintiff is a *pro se* prisoner in the custody of the Clark County Detention Center. On July  
16 28, 2016, Plaintiff received permission to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C.  
17 § 1915 and LSR 1-1 of the Local Rules of Practice. *See* Order (ECF No. 4). The court informed  
18 Plaintiff that his Complaint would be screened pursuant to 28 U.S.C. § 1915A once he paid an  
19 initial partial filing fee of \$10.67. *Id.* The court allowed Plaintiff 30 days to have the designated  
20 fee sent to the Clerk of the Court, on or before August 29, 2016. *Id.*

21 On September 14, 2016, the court entered a Report of Findings and Recommendation (ECF  
22 No. 5), which recommended to the district judge that this case be dismissed because Mr.  
23 Hemingway failed to comply with the Order (ECF No. 4) instructing him to pay an initial partial  
24 filing fee. In response, Mr. Hemingway filed his Motion (ECF No. 6), attaching his inmate balance  
25 history report showing that the Clark County Detention Center deducted funds from his account  
26 for the partial filing fee. Hemingway therefore requests that the court reopen his case.

27 The court contacted its financial department and verified that Mr. Hemingway's initial  
28 partial payment was in fact received on August 5, 2016. *See Receipt (ECF No. 7).* However, due

1 to a clerical error by the financial department, the receipt was not entered on the court's docket  
2 until October 6, 2016. This will be corrected.

3 Mr. Hemingway's case has not yet been dismissed or closed. Thus, the court will treat  
4 Hemingway's Motion as a request to reconsider the Report of Findings and Recommendation. The  
5 court will vacate and set aside the Report of Findings and Recommendation (ECF No. 5).

6 In a separate order, the court will screen Mr. Hemingway's Complaint as required by 28  
7 U.S.C. §§ 1915(e)(2) and 1915A(a); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc)  
8 (noting that § 1915(e)'s screening requirement "applies to all *in forma pauperis* complaints").<sup>1</sup> If  
9 his Complaint states a valid claim for relief, the court will direct the Clerk of the Court to issue  
10 summons to the Defendant and instruct the United States Marshal Service to serve the summons  
11 and complaint. *Cf.* Fed. R. Civ. P. 4(c)(3); LSR 1-3(c). Accordingly,

12 **IT IS ORDERED:**

- 13 1. Plaintiff Peyton H. Hemingway's Motion to Reopen Case (ECF No. 6) is construed as  
14 a motion to reconsider the Report of Findings and Recommendation and GRANTED.
- 15 2. The Report of Findings and Recommendation (ECF No. 5) is VACATED,  
16 WITHDRAWN and SET ASIDE.
- 17 3. The Clerk of the Court is instructed to deliver a copy of this Order to the supervisor of  
18 the financial department.
- 19 4. The Court will screen Mr. Hemingway's Complaint in a separate order.
- 20 5. Mr. Hemingway is advised that even if this action is dismissed in a screening order, he  
21 must still pay the full filing fee pursuant to § 1915(b) and the monthly payments from  
22 his inmate account will continue until the balance is paid.

23 Dated this 20th day of October, 2016.

24   
25 PEGGY A. TEEN  
26 UNITED STATES MAGISTRATE JUDGE

27 <sup>1</sup> 28 U.S.C. § 1915A(a) requires district courts to "review, before docketing, if feasible or, in any event, as  
28 soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a  
government entity or officer or employee of a governmental entity."